

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB

June 23, 1997
Paper No. 12
CEW

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Interlink Electronics, Inc.

Serial No. 74/619,816

Mark A. Cantor, Brooks & Kushman, attorney for applicant.

Darry Carmine, Trademark Examining Attorney, Law Office 102
(Myra Kurzbard, Managing Attorney).

Before Sams, Rice and Walters, Administrative Trademark
Judges.

Opinion by Walters, Administrative Trademark Judge:

Interlink Electronics, Inc. has filed a trademark
application to register the mark SUPERMOUSE for "computer
cursor control device, namely a cursor location controller
for desk-top, portable and hand-held use."¹

The Trademark Examining Attorney has finally refused
registration under Section 2(e)(1) of the Trademark Act, 15

¹ Serial No. 74/619,816, in International Class 9, filed January 6,
1995, based on use of the mark in commerce, alleging dates of first use
and use in commerce of December 22, 1993.

U.S.C. 1052(e)(1), on the ground that applicant's mark is merely descriptive of its goods.

Applicant has appealed. Both applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested. We affirm the refusal to register.

The test for determining whether a mark is merely descriptive is whether the involved term immediately conveys information concerning a quality, characteristic, function, ingredient, attribute or feature of a product or service. *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979); *In re Engineering Systems Corp.*, 2 USPQ2d 1075 (TTAB 1986). It is not necessary, in order to find a mark merely descriptive, that the mark describe each feature of the goods, only that it describe a single, significant quality, feature, etc. *In re Venture Lending Associates*, 226 USPQ 285 (TTAB 1985). Further, it is well-established that the determination of mere descriptiveness must be made not in the abstract or on the basis of guesswork, but in relation to the goods or services for which registration is sought, the context in which the mark is used, and the impact that it is likely to make on the average purchaser of such goods or services. *In re Recovery*, 196 USPQ 830 (TTAB 1977).

We agree with the Examining Attorney's conclusion that SUPERMOUSE is composed of the two terms SUPER and MOUSE, both of which are merely descriptive in connection with the

specified goods. In support of his conclusion that the term MOUSE is the name of the goods, the Examining Attorney has submitted a dictionary definition of MOUSE as "a small mobile manual device that controls movement of the cursor on a computer display"² and a description of a MOUSE from Microsoft Press' *Computer Dictionary*, 2d ed., 1994, as follows:

A common pointing device, popularized by its inclusion as standard equipment with the Apple Macintosh. With the rise in popularity of graphical user interfaces in MS-DOS, UNIX and OS/2, use of mice is growing throughout the personal computer and workstation worlds. The basic features of a mouse are a casing with a flat bottom, designed to be gripped by one hand; one or more buttons on the top; a multidirectional detection device (usually a ball) on the bottom; and a cable connecting the mouse to the computer. . . . By moving the mouse on a surface (such as a desk), the user typically controls an on-screen cursor. A mouse is a relative pointing device because there are no defined limits to the mouse's movement and because its placement on a surface does not map directly to a specific screen location. To select items or choose commands on the screen, the user presses one of the mouse's buttons, producing a "mouse click."

Additionally, the Examining Attorney has submitted the following excerpts³ of articles from the NEXIS database that use the term MOUSE:

² Webster's Ninth New Collegiate Dictionary, 1990.

³ The single newswire story was given little weight herein. A proprietary newswire article is circulated primarily to newspapers and news journals whose editors select from the releases those stories of sufficient interest to publish. The article's appearance in the NEXIS database does not prove that the news release appeared as a story in any newspaper or magazine. This story is evidence that the author used the term MOUSE in a certain manner and that editors were exposed to such use. However, we cannot conclude that the public was exposed to the

TrackMan Live from Logitech is a hand-held radio controlled mouse designed specifically for giving onscreen presentations. (*PC User*, February 8, 1995.)

Boxlight Corp. offers an optional hand-held remote control, which functions like a cordless mouse. .
. (*PC Magazine*, January 23, 1996.)

The \$229 Remote Control is a 4-ounce wireless, hand-held device that lets presenters, product demonstrators, or trainers - from up to 45 feet away - control the mouse. . .

Laserex's new gadget is a hand-held transmitter that provides total mouse emulation from up to 40 feet from a personal computer. (*The Phoenix Gazette*, October 31, 1994.)

Applicant's contention that its product is not "technically" a MOUSE is not supported by any evidence. Further, not only does the evidence submitted by the Examining Attorney support his contention that applicant's product would be considered to be a type of MOUSE, but applicant's own packaging and brochure support that conclusion.⁴ Applicant's brochure states "SuperMouse is a multi-purpose mouse"; and "Just unplug your ordinary mouse and plug in SuperMouse." The product specifications indicate that the hardware interface for applicant's product is through the mouse port of the user's computer; and that applicant's product is compatible with Microsoft Mouse

story. See, *In re Men's International Professional Tennis Council*, 1 USPQ2d 1917 (TTAB 1986).

⁴ The mere two statements on applicant's packaging and brochure that applicant's product is other than a MOUSE (e.g., applicant's packaging contains the statement "Unlike a mouse or trackball, SuperMouse has no moving parts to break . . ." and its brochure states "Introducing

Driver software. Applicant's packaging refers to the product as "Three Mice in One!" and describes the product as a "Desktop Mouse," a "Portable Mouse," and a "Hand-Held Mouse." Applicant's packaging includes the following statements: "SuperMouse is a 3-in-1 mouse - for any application, anyplace!"; "It's a great hand-held mouse"; and "SuperMouse offers full two-button Microsoft® mouse functionality."

We add that, aside from the question of whether the product represented by the specimens of record and described in applicant's brochure is a mouse, the record supports the conclusion that applicant's broad identification of goods clearly encompasses a product properly defined as a MOUSE. Thus, MOUSE is merely descriptive in connection with applicant's identified goods.

Likewise, the term SUPER is more than mere vague puffery in connection with the identified goods. Rather, SUPER is merely descriptive of several real and specific characteristics of applicant's product that are touted by applicant in its literature as being superior. For example, applicant claims that its product is more versatile than an "ordinary" mouse because it can be used in three different ways; that its product is more ergonomically-correct than an

SuperMouse - the mouse alternative . . .") are outweighed by the number of references thereon to applicant's product as a MOUSE.

"ordinary" mouse because of its shape and its push-button controlling device; and that its product has fewer moving parts than an "ordinary" mouse and is, thus, maintenance free. See, *In re Ralston Purina Company*, 191 USPQ 237 (TTAB 1976); and *In re U.S. Steel Corp.*, 225 USPQ 750 (TTAB 1985) and cases cited therein.

We are not convinced that SUPERMOUSE is not merely descriptive in connection with the identified goods by applicant's argument that SUPERMOUSE connotes a cartoon superhero and, in this case, is reminiscent of Superman and Mighty Mouse. It is a general principle that a combination of descriptive words may result in an arbitrary unitary designation which is registrable if the juxtaposition of the words is inventive, evokes a unique commercial impression, or if the term has a bizarre or incongruous meaning as applied to the goods or services. See, *In re National Shooting Sports Foundation, Inc.*, 219 USPQ 1018, 1020 (TTAB 1983) and cases cited therein. We find that such is not the case herein. There is no question that MOUSE has another definition as a small mammal. We also note that applicant's packaging includes several pictures of an anthropomorphic caped mouse reminiscent of cartoon or comic superheroes. However, that figure is not included as part of the mark in this application. Further, we believe that the term MOUSE, standing alone and considered in connection with the

identified goods, is a sufficiently established term in the computer field that such term will call to mind a computer cursor control device rather than a small mammal. The addition of the term SUPER to MOUSE merely indicates the claim of superlative qualities attributed to the computer-related MOUSE. SUPERMOUSE is not an inventive juxtaposition of the words SUPER and MOUSE, nor does it evoke a unique commercial impression or impart a bizarre or incongruous meaning to the mark as applied to the goods or services.

In the present case, we conclude that, when applied to applicant's goods, the term SUPERMOUSE immediately describes, without conjecture or speculation, a significant feature or function of applicant's goods, namely, that it is computer cursor control device with special features that improve the product's quality and versatility. Nothing requires the exercise of imagination, cogitation, mental processing or gathering of further information in order for purchasers of and prospective customers for applicant's services to readily perceive the merely descriptive significance of the term SUPERMOUSE as it pertains to applicant's goods.

Serial No. 74/619,816

Decision: The refusal under Section 2(e)(1) of the Act
is affirmed.

J. D. Sams

J. E. Rice

C. E. Walters
Administrative Trademark Judges,
Trademark Trial and Appeal Board